effect to the intention of the parties appears to be prevailing, yet the later Massachusetts cases hold that for the easement reserved to be construed as an exception it must have been used by the grantor before the grant. *Claflin* v. *Boston & Albany R. R.*, 157 Mass. 489. Why such usage should affect the subject is difficult to comprehend. The principal case would in Massachusetts therefore have to be supported on the theory of an implied grant, and, there being no words of limitation, the grantor would be held to have had only a life estate in the easement, and the plaintiff, his heir, would have accordingly failed.

THE PROTECTION OF COPLEY SQUARE. — The Supreme Court of Massachusetts in upholding the constitutionality of a statute which limited the height of buildings bordering on Copley Square would seem to have reached a just conclusion. Copley Square is a public square or park surrounded by a notable group of structures of a public or quasi-public nature. The statute in question prohibited the erection of buildings to a height of over ninety feet on the streets adjoining the square. At the time of the passage of the act the defendants were in the course of erecting a high apartment house on a corner which abutted on the square. Subsequently they built beyond the prescribed height, and to an action by the attorney general set up the defence that the statute was unconstitutional. It was held that the statute, which created an easement over adjoining property in favor of a public park, tended to promote the beauty of the park and to prevent unreasonable encroachments upon the light and air previously enjoyed; hence it came within the power of eminent domain. *Attorney General* v. *Williams*, 55 N. E. Rep. 77 (Mass.).

The court said that this statute might well have been passed in the exercise of the police power, but the fact that it provided compensation for property owners damaged thereby seemed to show that the legislature intended it to come under the power of eminent domain, the taking of rights in property for the use of the public and compensating the owner of such property for his injury. The decision seems correct whichever ground be taken. The right to impose reasonable restrictions for the benefit of the neighborhood as to the nature and use of buildings in a city is unquestionably within the police or regulating power. *Watertown* v. *Mayo*, 109 Mass. 315; *Talbot* v. *Hudson*, 16 Gray, 417. So under the right of eminent domain it is settled law that the legislature may take land in a city for a public park and expend public money upon its improvement. *Shoemaker* v. *U. S.*, 147 U. S. 282; *Foster* v. *Commissioners*, 133 Mass. 321. The creating of an easement over land adjoining a park is of an entirely similar nature. Whether the decision be rested upon the one ground or the other depends mainly upon the point of view that is taken. Yet the provision for compensation to the property holder damaged does not conclusively show that the statute was based on the right of eminent domain. As in the exercise of the police power the legislature may, if it sees fit, provide compensation, and justly. On the whole, it would seem better to class it under the police power, the right of regulating or restraining the use of one's property so that it shall not be injurious to the equal enjoyment of others. *Commonwealth* v. *Alger*, 7 Cush. 53. For the object of the statute is rather the regulation of an individual's use of his property than the appropriation of such property for a public use.